

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CHAD WHITTINGTON,) Case No. CV 23-6164-MWF (JPR)
)
 Plaintiff,) ORDER DISMISSING ACTION FOR
) FAILURE TO PROSECUTE AND FAILURE
 v.) TO STATE A CLAIM
)
JASON BLACK et al.,)
)
 Defendants.)
)
)
)

On July 19, 2023, Plaintiff filed a civil-rights Complaint challenging the administration of antipsychotic medication to him at Atascadero State Hospital in San Luis Obispo. On October 16, 2023, the Court dismissed the Complaint with leave to amend, explaining that Plaintiff had failed to state a claim. Meanwhile, however, he was apparently transferred back to jail from the state hospital to await trial, and it is not clear whether administration of the drugs continued. (See Change Address, ECF No. 9.) He was subsequently released from jail and apparently is no longer incarcerated. (See Change Address, ECF No. 11.)

The Court gave Plaintiff 28 days to file an amended complaint, but to date he has neither done so nor requested an

1 extension of time. The order dismissing the Complaint was not
2 returned as undeliverable, so Plaintiff appears to have received
3 it. And the order warned him that if he "fail[ed] to timely file
4 a sufficient" amended complaint, his lawsuit could be dismissed.
5 (Order, ECF No. 10 at 12.)

6 Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (per
7 curiam), examined when it is appropriate to dismiss a pro se
8 plaintiff's lawsuit for failure to prosecute. See also Link v.
9 Wabash R.R., 370 U.S. 626, 629-30 (1962) ("The power to invoke
10 [dismissal] is necessary in order to prevent undue delays in the
11 disposition of pending cases and to avoid congestion in the
12 calendars of the District Courts."). A court must consider "(1)
13 the public's interest in expeditious resolution of litigation;
14 (2) the court's need to manage its docket; (3) the risk of
15 prejudice to the defendants; (4) the public policy favoring
16 disposition of cases on their merits[;] and (5) the availability
17 of less drastic sanctions." Carey, 856 F.2d at 1440.
18 Unreasonable delay creates a rebuttable presumption of prejudice
19 to the defendants that can be overcome only with an affirmative
20 showing of just cause by the plaintiff. See In re Eisen, 31 F.3d
21 1447, 1452-53 (9th Cir. 1994).

22 Here, the first, second, third, and fifth Carey factors
23 militate in favor of dismissal. In particular, Plaintiff has
24 offered no explanation for his failure to file an amended
25 complaint fixing the deficiencies identified by the Court. Thus,
26 he has not rebutted the presumption of prejudice to Defendants.
27 No less drastic sanction is available, as the Complaint fails to
28 state a claim and therefore cannot proceed, and Plaintiff is

1 unable or unwilling to comply with the instructions for fixing
2 his allegations. Indeed, now that he has apparently been
3 released from jail, he may no longer wish to pursue his claim.
4 And because his lawsuit cannot go forward in its current form,
5 the Court is unable to manage its docket. Although the fourth
6 Carey factor weighs against dismissal – as it always does –
7 together the other factors outweigh the public's interest in
8 disposing of the case on its merits. See Ferdik v. Bonzelet, 963
9 F.2d 1258, 1261-63 (9th Cir. 1992) (as amended) (upholding
10 dismissal of pro se civil-rights action for failure to timely
11 file amended complaint remedying deficiencies in caption);
12 Baskett v. Quinn, 225 F. App'x 639, 640 (9th Cir. 2007)
13 (upholding dismissal of pro se civil-rights action for failure to
14 state claim or timely file amended complaint).

15 **ORDER**

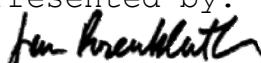
16 Accordingly, this action is dismissed for failure to
17 prosecute and failure to state a claim.

18 LET JUDGMENT BE ENTERED ACCORDINGLY.

19
20 DATED: March 11, 2024

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22 
MICHAEL W. FITZGERALD
United States District Judge

23 Presented by:

24 
25 Jean Rosenbluth
U.S. Magistrate Judge